

**CLASS - LL.M. IVth SEM**  
**SUBJECT - SPECIFIC TORT**  
**PAPER CODE - L -4006**

**Topic: NUISANCE**

**Introduction**

A person in possession of a property is entitled to its undisturbed enjoyment as per law. However, if someone else's improper use or enjoyment in his property ends up resulting into an unlawful interference with his enjoyment or use of that property or of some of the rights over it, or in connection with it, we can say that the tort of nuisance has occurred.

The word "nuisance" has been derived from the Old French word "nuire" which means "to cause harm, or to hurt, or to annoy". The Latin word for nuisance is "nocere" which means "to cause harm".

Nuisance is an injury to the right of a person's possession of his property to undisturbed enjoyment of it and results from an improper usage by another individual.

**Definitions by Various thinkers**

According to **Stephen**, nuisance is anything done to the hurt or annoyance of the tenements of another, or of the lands, one which doesn't amount to trespass.

According to **Salmond**, nuisance consists in causing or allowing to cause without lawful justification, the escape of any deleterious thing from one's land or from anywhere into land in possession of the plaintiff, such as water, smoke, gas, heat, electricity, etc.

## **Essential elements of Nuisance**

### **Wrongful act**

Any act which is done with the intention to cause the infringement of the legal rights of another is considered to be a wrongful act.

### **Damage or loss or annoyance caused to another individual.**

Damage or loss or annoyance must be such which the law should consider as a substantial material for the claim.

## **Kinds of Nuisance**

### **1. Public Nuisance**

The Indian Penal code defines nuisance as an act which causes any common injury, danger or annoyance, to the people in general who dwell or occupy the property, in the vicinity, or which must necessarily cause injury, obstruction, danger, or annoyance to the people who may have occasion to use any public right.

Public nuisance affects the society and the people living in it at large, or some considerable portion of the society and it affects the rights which the members of the society might enjoy over the property. The acts which seriously affects or interferes with the health, safety or comfort of the general public is a public nuisance.

Instances where an individual may have a private right of action in respect to a public nuisance:

- He must show the existence of any personal injury which is of a higher degree than the rest of the public.

- Such an injury has to be direct and not just a consequential injury.
- The injury must be shown to have a huge effect.

## 2. Private Nuisance

Private Nuisance is that kind of nuisance in which a person's use or enjoyment of his property is ruined by another. It may also injuriously affect the owner of the property by physically injuring his property or by affecting the enjoyment of the property. Unlike public nuisance, in private nuisance, an individual's usage or enjoyment of property is ruined as distinguished from the public or society at large. The remedy for private nuisance is a civil action for damages or an injunction or both.

### Elements which constitute a private nuisance

- The interference must be unreasonable or unlawful. It is meant that the act should not be justifiable in the eyes of the law and should be by an act which no reasonable man would do.
- Such interference has to be with the use or enjoyment of land, or of some rights over the property, or it should be in connection with the property or physical discomfort.
- There should be seeable damage to the property or with the enjoyment of the property in order to constitute a private nuisance.

### Case Law: *Rose v. Miles*(1815) 4M &S. 101

The defendant had wrongfully obstructed a public navigable creek which obstructed the defendant from transporting his goods through the creek due to which he had to transport his good through land because of which he suffered extra costs in the transportation. It was held that the act of the defendant had caused a public nuisance as the plaintiff successfully proved that he had incurred loss over other members of the society and this he had a right of action against the defendant.

A nuisance may be in respect of either **property** or **physical discomfort**

## **1. Property**

In the case of a nuisance with respect to the property, any sensible injury to the property will be enough to support an action for the damages.

## **2. Physical discomfort**

In a suit of nuisance arising out of physical discomfort, there are two essential conditions required.

- **In excess of the natural and ordinary course of enjoyment of the property.**

The usage by the third party should be of out of the natural course of enjoyment from one party.

- **Interfering with the ordinary conduct of human existence.**

The discomfort should be of such a degree that it would affect an individual in the locality and people would not be able to put up or tolerate with the enjoyment.

### **Case Law: Radhey Shyam v. Gur Prasad AIR 1978 All 86**

Mr Gur Prasad Saxena and another filed a suit against Mr Radhey Shyam and five other individuals for permanent injunction restraining the defendant from installing and running a flour mill in the premises occupied by the defendant. Gur Prasad Saxena filed another suit against Radhey Shyam and five other individuals for a permanent injunction from running and continuing to run an oil expeller plant. The plaintiff has alleged that the mill was causing a lot of noise which in turn was affecting the health of the plaintiff. It was held that by running a flour mill in a residential area, the defendant was causing a nuisance to the plaintiff and affecting his health severely.

## What are the defences available to Nuisance?

There are many valid defences available to an action for tort, these are:

### 1. Prescription

- A prescription is a title acquired by use and time and which is allowed by the law, a person claims any property because his ancestors have had the possession of the property by law.
- Prescription is a special kind of defence, as, if a nuisance has been peacefully and openly been going on without any kind of interruption then the defence of prescription is available to the party. On the expiration of this term of **twenty years**, the nuisance becomes legalised as if it had been authorised in its commencement by a grant from the owner of the land.
- The essence of prescription is explained in Section 26 of the limitations act and Section 15 of the Easements Act.

There are three essentials to establish a person's right by prescription, these are

1. **Use or enjoyment of the property:** The use or enjoyment of the property must be acquired by the individual by law and the use or enjoyment must be done openly and peacefully.
2. **Identity of the thing/property enjoyed:** The individual should be aware of the identity of thing or property which he or she is peacefully or publically enjoying.
3. **It should be unfavourable to the rights of another individual:** The use or enjoyment of the thing or property should be of such a nature that it should be affecting the rights of another individual thus causing a nuisance and even after knowing of such a nuisance being caused there must've been no action taken against the person causing it for at least twenty years.

## **2. Statutory authority**

- When a statute authorises the doing of a particular act or the use of land in a way, all the remedies whether by action or indictment or charge, are taken away. Provided that every necessary reasonable precaution has been taken.
- The statutory authority may be either absolute or conditional.
- When there is an absolute authority, the statute allows the act and it is not necessary that the act must cause a nuisance or any other form of injury.
- Whereas in the case where there is a conditional authority, the state allows the act to be done only if it can be done without any causation of nuisance or any other form of injury.

## **What are the remedies for nuisance?**

There are three kinds of remedies available in the case of a nuisance, these are:

### **1. Injunction**

An injunction is a judicial order restraining a person from doing or continuing an act which might be threatening or invading the legal rights of another. It may be in the form of a temporary injunction which is granted on for a limited period of time which may get reversed or confirmed. If it is confirmed, then it takes the form of a permanent injunction.

### **2. Damages**

The damages may be offered in terms of compensation to the aggrieved party, these could be nominal damages. The damages to be paid to the aggrieved party is decided by the statute and the purpose of the damages is not just compensating the individual who has suffered but also making the defendant realise his mistakes and deter him from repeating the same wrong done by him.

### 3. Abatement

Abatement of nuisance means the removal of a nuisance by the party who has suffered, without any legal proceedings. This kind of remedy is not favoured by the law. But is available under certain circumstances.

This privilege must be exercised within a reasonable time and usually requires notice to the defendant and his failure to act. Reasonable force may be used to employ the abatement, and the plaintiff will be liable if his actions go beyond reasonable measures.

**Example:** Ace and Beck are neighbours, Beck has a poisonous tree on his land which overtime outgrows and reaches the land of Ace. Now Ace has every right to cut that part of the tree which is affect his enjoyment of his land with prior notice to Beck. But if Ace goes to Beck, land without his permission, and chops off the entire tree which then falls on the land of Beck, then Ace shall be in the wrong here as his action taken would be beyond reasonableness.

### Nuisance and Trespass – Distinguished

1. Trespass, on one hand, is the direct physical interference with the plaintiff's possession of the property through some material or tangible object whereas, in the case of a nuisance, it is an injury to some right of the possession of the property but not the possession itself.
2. Trespass is actionable per se (actions which do not require allegations or proof), whereas, in the case of a nuisance, only the proof of actual damage to the property is required.

**Example:** Simply entering on another individual's property without the owner's consent and without causing him any injury would be trespass whereas if there is an injury to the property of another or any interference with his enjoyment of the property, then it will amount to a nuisance.

3. If the interference with the use of the property is direct, then the wrong is trespass. Whereas if the interference with the use or enjoyment of the property is consequential then it will amount to a nuisance.

**Example:** Planting a tree on someone else's land would amount to trespass whereas if a person plants a tree on their own land which then outgrows to the land of another would amount to a nuisance.

**Case Law: Ushaben Navinchandra Trivedi v. Bhagyalaxmi Chitra Mandal AIR 1978 Guj 13, (1977) GLR 424.**

In this case, the plaintiff had sued the defendant for a permanent injunction to restrain the defendant from showing a movie named "Jai Santoshi Maa". It was said by the plaintiff that the contents of the movie significantly hurt the religious sentiments of the people belonging to the Hindu community as well as the religious sentiments of the plaintiff as the movie showed Hindu Goddess' Laxmi, Parvati, and Saraswati, to be jealous of one another and were ridiculed in the film. It was held that hurt to religious sentiments was not an actionable wrong.

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